



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

JUN - 4 2014

OFFICE OF
COMPLIANCE AND ENFORCEMENT

Reply To: OCE-127

**FOR SETTLEMENT PURPOSES ONLY / PRIVILEGED AND CONFIDENTIAL
COMMUNICATION**

Certified Mail Return Receipt Requested

Mr. Michael Brose
Flint Hills Resources Alaska, LLC
Vice President of Alaska Operations
North Pole Refinery
1100 H & H Lane
North Pole, Alaska 99705

Re: Opportunity to Enter into Pre-Filing Settlement Negotiations and Notice of Intent to File
Complaint for Violations of the Resource Conservation and Recovery Act

Dear Mr. Brose:

The U.S. Environmental Protection Agency (EPA) has identified violations of the Resource Conservation and Recovery Act (RCRA) by Flint Hills Resources Alaska, LLC. (Respondent) at its North Pole Refinery in North Pole, Alaska. These violations occurred between June 19, 2013, and June 22, 2013, and arose out of the mis-management of spent groundwater remediation pre-filters that contained iron sulfide. These pre-filters self-ignited causing two fires at the North Pole Refinery. The purpose of this letter is to inform you of EPA's intent to initiate an action for civil penalties for these violations. By this letter, we wish to provide you with an opportunity to discuss this matter with EPA prior to the filing of a complaint. A summary of the violations identified by EPA is enclosed with this letter.

RCRA Section 3008(a), 42 U.S.C. § 6928(a), authorizes EPA to file a complaint for penalties of up to \$37,500 per day for each RCRA violation. It is EPA's view that a total penalty of **\$101,600** is an appropriate settlement amount to resolve the alleged violations. This amount was determined in accordance with the factors set forth in Section 3008 of RCRA and in EPA's RCRA Civil Penalty Policy, a copy of which has been enclosed for your reference.

A "Summary of Alleged Violations and Proposed Settlement Penalty," which provides information about EPA's allegations in this matter, as well as an explanation of EPA's proposed settlement penalty, is enclosed. EPA's "Small Business Resources Information Sheet," which provides information on compliance assistance that may be helpful to you, is also enclosed.

In general, EPA favors pre-filing discussions, as they help ensure that we have all relevant information which can lead to resolution of enforcement matters without resorting to the time and expense of litigation. If we are able to reach a settlement, no complaint would be filed; instead, we would resolve

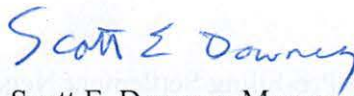
the case with an administrative consent agreement and final order. Once a consent agreement and final order is signed by all parties, EPA generally issues a press release announcing the settlement.

If Flint Hills Resources Alaska and EPA do not reach a settlement within 90 days of receipt of this notice, EPA will either file an administrative complaint and the case will be assigned to an administrative law judge or refer the matter to the Department of Justice for filing in federal district court. EPA reserves the right to seek the maximum allowable penalty in litigation of this case should Flint Hills Resources Alaska and EPA fail to reach a settlement in the time period allotted.

To reach settlement within 90 days, we will need to begin pre-filing negotiations within 30 days. If you wish to set up an initial meeting to discuss this matter, please contact Shirin Gallagher in the Office of Regional Counsel at (206) 553-4194 **within 14 days of receipt of this notice**. EPA is willing to meet with you at our Seattle office or by conference call. If we do not hear from you within 14 days, EPA intends to initiate a formal enforcement action unilaterally.

Thank you for your prompt attention to this important matter.

Sincerely,



Scott E. Downey, Manager
Air and RCRA Compliance Unit

Enclosures:

1. RCRA Civil Penalty Policy
2. Summary of Alleged Violations and Proposed Settlement Penalty
3. Small Business Resources Information Sheet

Summary of Alleged Violations and Proposed Settlement Penalty
Flint Hills Resources Alaska, LLC (Respondent)

Alleged Violations

COUNT 1: Failure to Make a Hazardous Waste Determination

Pursuant to 40 C.F.R. § 262.11, persons who generate solid wastes are required to determine if that waste is hazardous. EPA alleges that Respondent failed to make a determination that spent groundwater remediation pre-filters generated at its North Pole, Alaska, Refinery (Facility) were hazardous waste. The waste stream was generated on June 19, 2013, and exhibited the characteristics of ignitability and reactivity. The waste material self-ignited and caused two fires at the Facility evidencing these characteristics. Respondent's failure to make a determination of the status of the waste stream at the point of its generation violated 40 C.F.R. § 262.11.

COUNT 2: Storage of Hazardous Waste at the Facility without a Permit or Interim Status

Section 3005 of RCRA, 42 U.S.C. § 6925, and 40 C.F.R. § 270.1(c) require that any person who treats, stores, or disposes of hazardous waste must have a permit or interim status. 40 C.F.R. § 262.34(a) and (b) provide that a generator may accumulate hazardous waste on-site for up to 90 days without a permit or interim status, provided that the generator complies with specified conditions. Between June 19 and June 22, 2013, Respondent failed to manage a hazardous waste (spent groundwater pre-filters) in accordance with several of those conditions. Namely, Respondent failed to: (1) store its hazardous waste in a container that must always be closed during storage, except when it is necessary to add or remove waste, as required by 40 C.F.R. § 262.34(a)(1) and 40 C.F.R. § 265.173(a); (2) clearly and visibly mark the date of each period of hazardous waste accumulation on its hazardous waste container as required by 40 C.F.R. § 262.34(a)(2); (3) store hazardous waste at the Facility in a container labeled with the words "Hazardous Waste" as required by 40 C.F.R. § 262.34(a)(3); and (4) maintain and operate its facility in such a manner as to minimize the possibility of a fire, as required by 40 C.F.R. § 262.34(a)(4) and 40 C.F.R. § 265.31. Accordingly, Respondent violated the requirements of Section 3005 of RCRA, 42 U.S.C. § 6925, and 40 C.F.R. § 270.1(c).

Proposed Settlement Penalty

The following table notes EPA's determination, for settlement purposes, of the appropriate categorization of the "potential for harm" and "extent of deviation" for each violation alleged and the corresponding proposed civil penalty amount. In this instance, EPA concludes that Respondent was negligent in its failure to manage its spent groundwater pre-filters as hazardous waste when it had knowledge that the waste was both ignitable and reactive and had self-ignited on at least one other occasion in 2011. EPA has therefore increased the multi-day component of the penalty calculation for Count 2 by 25 percent.

#	Count	Potential for Harm	Extent of Deviation	Gravity	Adjustment Factors	Economic Benefit	Total
1	Failure to make a hazardous waste determination	Major	Major	\$37,500	--	--	\$37,500
2	Storage of hazardous waste without a permit or interim status	Major	Major	\$58,770 ¹	\$5,318	--	\$64,088
Total				\$96,270 ²	\$5,318	--	\$101,600

¹ For Count 2, a multi-day penalty was applied. The penalty for day 1 was \$37,500, with an additional penalty of \$21,270 (\$7,090 x 3) for days 2-4. A 25 percent increase to the multi-day penalty was applied to the multi-day component of the penalty. The total gravity-based penalty for this count therefore is \$64,088.

² Pursuant to the memorandum from Grant Nakayama, dated December 29, 2008, the total applicable gravity-based penalty for all counts was rounded to the nearest unit of \$100.

Total Penalty Calculation Amount: \$101,600